

**Mississippi Electronic Courts**  
**Harrison County Circuit Court (County Court - Gulfport)**  
**CIVIL DOCKET FOR CASE #: 24CO1:12-cv-01442**  
**Internal Use Only**

Bogan v. Walmart Stores Inc  
Assigned to: Robin Alfred Midcalf

Date Filed: 08/20/2012  
Jury Demand: Defendant  
Nature of Suit: 181 Negligence - General  
Jurisdiction: General

**Plaintiff**

**Joann Bogan**  
3622 Reynosa Dr  
Gulfport, Ms 39501

represented by **Warren Leon Conway**  
Conway & Martin, PC  
Post Office Box 757  
1600 24th Ave Suite B (39501)  
GULFPORT, MS 39502  
228-863-3183  
Fax: 228-863-3379  
Email: wconway@conwaymartin.com  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Walmart Stores Inc**  
645 Lakeland East Drive Ste 101  
Flowood, MS 39232  
*C/o C T Corporation System*  
*doing business as*  
Wal Mart Supercenter Store #969

represented by **Wilbur Pemble Delashmet**  
DeLashmet & Marchand  
P. O. Box 2047  
462 Dauphin Street  
MOBILE, AL 36602  
251-433-1577  
Fax: 251-433-1578  
Email: wpd@delmar-law.com  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
08/20/2012	<u>1</u>	(Court only) Filing fee: \$ 166, Receipt Number: 47838, Method of Payment: Check, Fee Status: Paid, Paid By: Warren Leon Conway, Remarks: 3236, (KI) (Entered: 08/20/2012)
08/20/2012	<u>3</u>	SUMMONS Issued as to Walmart Stores Inc c/o CT Corporation System. Sent to attorney for service. (KI) (Entered: 08/20/2012)
08/22/2012	<u>4</u>	COMPLAINT against Walmart Stores Inc, filed by Joann Bogan. (Attachments: # <u>1</u> Civil Cover Sheet) (WJ) (Entered: 08/22/2012)
		"DOCUMENT NOT ACCEPTED- SEE ANNOTATION BELOW"

10/29/2012	<u>5</u>	SUMMONS Returned Executed by Joann Bogan. Walmart Stores Inc served on 10/22/2012, answer due 11/21/2012. Service type: Personal (Conway, Warren) Modified on 11/2/2012 (KI). (Entered: 10/29/2012)
11/02/2012	<u>6</u>	DOCKET ANNOTATION as to document <u>5</u> Document does not have a case number or header on pleading please correct and refile. (KI) (Entered: 11/02/2012)
11/06/2012	<u>7</u>	ANSWER to <u>4</u> Complaint with Jury Demand by Walmart Stores Inc. (Delashmet, Wilbur) (Entered: 11/06/2012)
11/06/2012	<u>8</u>	NOTICE OF SERVICE of Interrogatories Propounded to Plaintiff by Walmart Stores Inc. (Delashmet, Wilbur) (Entered: 11/06/2012)
11/06/2012	<u>9</u>	NOTICE OF SERVICE of Request for Production of Documents Propounded to Plaintiff by Walmart Stores Inc. (Delashmet, Wilbur) (Entered: 11/06/2012)
12/03/2012	<u>10</u>	NOTICE OF SERVICE of Request for Admissions Propounded to Plaintiff by Walmart Stores Inc. (Delashmet, Wilbur) (Entered: 11/06/2012)
12/06/2012	<u>11</u>	NOTICE OF SERVICE of Responses to Request for Admissions by Joann Bogan. Related document: <u>9</u> Notice of Service of Request for Admissions filed by Walmart Stores Inc. (Conway, Warren) (Entered: 12/06/2012)

IN THE COUNTY COURT OF HARRISON COUNTY, MISSISSIPPI

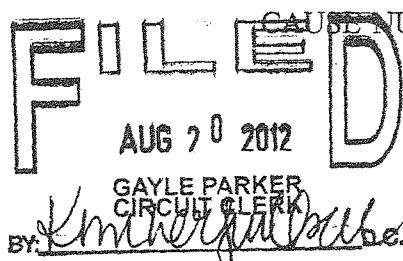
JOANN BOGAN

PLAINTIFF

VERSUS

WAL-MART STORES, INC.  
JOHN DOES 1-10 PERSONS  
JOHN DOES 11-20 ENTITIES

DEFENDANT



COMPLAINT

COMES NOW the Plaintiff, JOANN BOGAN, by and through her attorney of record, Warren L. Conway, and files this her Complaint against the Defendant WAL-MART STORES, INC., and for good cause would respectfully state unto this Honorable Court the following to-wit:

I.

The Plaintiff, JOANN BOGAN, is an adult citizen of Harrison County, MS.

II.

The Defendant, WAL-MART STORES, INC., is and at all times material hereto was a foreign corporation authorized to do business, and doing business in the State of Mississippi, with C T Corporation System 645 Lakeland East Dr. Ste 101, Flowood, MS 39232, as its agent for service of process.

III.

The Defendant, at all times material hereto, did own and operate the Walmart Supercenter Store #969 as a retail establishment at the premises located at 9350-A Highway 49, Gulfport, MS 39503.

I hereby certify that the above and foregoing constitutes a true and correct copy.

Gayle Parker  
Circuit Court Clerk

By Kimberly Babbell D.C.

IV.

The Defendants', Unknown John and Jane Does 1-20, identities are not known to the Plaintiff at this time. However, it is believed that they are adult resident citizens of Harrison County, Mississippi and or entities created under the laws of the state of Mississippi or other states and through the discovery process it is believed that their identities will become known and at that time the Plaintiff will seek leave of this Honorable Court to amend her Complaint and identify the unknown persons and serve them with process for wrongs committed and violations against the rights, privileges and immunities of Joann Bogan, all of which it is alleged were committed in their official and/or individual capacities.

V.

As a proximate result of the defendant's negligence on or about February 17, 2011, a cooler used for storing bags of ice leaked and formed a pool of water was on the floor in which the plaintiff slipped and fell to the ground, thereby causing the plaintiff to suffer injuries including but not limited to past, present and future medical expenses, past, present and future mental and physical pain and suffering and past, present and future lost wages.

VI.

The Defendant, as owner, landlord, lessee, tenant, or manager of said premises, and operating said premises as a retail establishment, did owe to invitees the following duties:

- a) To exercise ordinary care to keep the premises in a reasonably safe condition; and
- b) To warn of dangerous conditions, not readily apparent, of which Defendant was aware or should have been aware;
- c) To establish, publish, and perform policies and procedures designed to assure that the

premises were maintained in a reasonably clean and safe condition;

- d) To train employees to perform policies and procedures designed to assure that the premises were maintained in a reasonably clean and safe condition;
- e) To staff the business adequately to ensure that policies and procedures designed to assure that the premises were maintained in a reasonably clean and safe condition were performed; and
- f) To train employees to promptly respond to notice of potentially unsafe conditions on the premises.

VII.

The Defendant did negligently and/or wantonly fail to perform some or all of the duties described hereinabove at Paragraphs 6 and 8.

VIII.

Said Defendant was negligent in the following manners:

- a) Permit and/or allow a hazardous condition to exist by which the Plaintiff could be injured at a time when said defendant knew or should have known that said monitor and/or bracket were loose and dangerous and at a time when said defendant (s) should have taken some action to prevent injury to the Plaintiff or any other patron;
- b) Fail to correct or remove hazardous conditions in an area in which customers travel frequently;
- c) Fail to properly maintain the condition of the monitors and/or brackets and machines in general in the Defendant's establishment, particularly in an area in which customers travel most frequently;
- d) Allow a hazardous condition to exist on the Defendant's property at a time when the

defendant has been advised of its presence; and

e) Fail to warn Plaintiff of the presence of the hazardous condition or of the danger it presented.

IX.

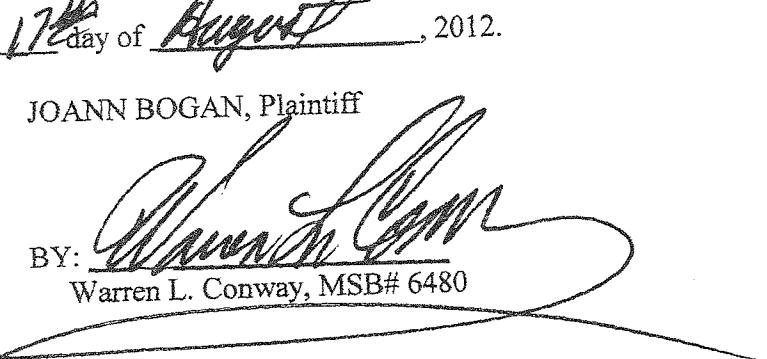
The breaches of duty committed by Defendant(s) jointly and severally, proximately caused or contributed to injuries sustained by the Plaintiff and caused her to incur damages in the form of past, present and future medical expenses, pain and suffering and lost wages.

X.

The Plaintiff brings suit and demands damages within the jurisdictional limitations of this Honorable Court.

RESPECTFULLY SUBMITTED, this the 17<sup>th</sup> day of August, 2012.

JOANN BOGAN, Plaintiff

BY:   
Warren L. Conway, MSB# 6480

CONWAY & MARTIN  
ATTORNEYS AT LAW  
1600 24<sup>TH</sup> AVENUE, SUITE B  
Post Office Box 757  
Gulfport, MS 39502-0757  
(228)863-3183

County Court District 1  
Gayle Parker, Circuit Clerk  
1801 23rd Avenue  
Gulfport, MS 39501  
(228) 865-4230

Received From: Conway, Warren Leon  
Po Box 757

Date: 8/20/2012  
Receipt #: 47838

Gulfport, MS 39502-0757

Clerk: KMI

Paying for: Bogan, Joann

Reference #: 3236

Transaction Type: Civil

Original Case #:

Payment Type: Check

Comment:

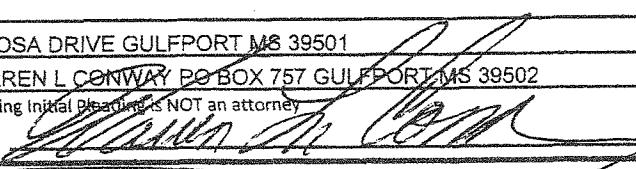
Total Paid

Total Received

Change Due

\$166.00  
\$166.00  
\$166.00  
\$0.00

Case #	Caption	Previous Balance	Amount Paid	Balance Due
D24011201442	Joann Bogan vs Walmart Stores, Inc.; Ct Corp. System, Registered Agent	\$166.00	\$166.00	\$0.00

<b>COVER SHEET</b> <b>Civil Case Filing Form</b> <i>(To be completed by Attorney/Party Prior to Filing of Pleading)</i>		Court Identification Docket # <b>24 1 60</b> County # <b>Judicial</b> Court ID <b>CH, CL, CO</b> District <b>162012</b>	Case Year <b>2012</b>	Docket Number <b>2114442</b> Local Docket ID																																																																																																																			
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Address of Plaintiff <u>3622 REYNOSA DRIVE GULFPORT MS 39501</u>		MS Bar No. <u>6480</u>																																																																																																																					
Attorney (Name & Address) <u>WARREN L CONWAY PO BOX 757 GULFPORT MS 39502</u>		<input type="checkbox"/> Check ( x ) if Individual Filing Initial Plaintiff is NOT an attorney <u>Signature of Individual Filing:</u> 																																																																																																																					
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Business <u>WAL-MART STORES, INC.</u>		Enter legal name of business, corporation, partnership, agency - If Corporation, indicate the state where incorporated <input type="checkbox"/> Check ( x ) if Business Defendant is acting in the name of an entity other than the above, and enter below: <u>D/B/A WAL-MART SUPERCENTER STORE #969</u>																																																																																																																					
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(228)863-3183

IN THE COUNTY COURT OF HARRISON COUNTY, MISSISSIPPI

JOANN BOGAN

PLAINTIFF

VERSUS

CAUSE NUMBER: D240112-1442

WAL-MART STORES, INC.  
JOHN DOES 1-10 PERSONS  
JOHN DOES 11-20 ENTITIES

DEFENDANT

SUMMONS

THE STATE OF MISSISSIPPI

TO: WAL-MART STORES, INC.  
C/O C T CORPORATION SYSTEM  
645 LAKELAND EAST DRIVE, SUITE 101  
FLOWOOD, MS 39232

NOTICE TO DEFENDANT

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT  
AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand-deliver a copy of a written response to the Complaint to Warren L. Conway, the attorney for the Plaintiff, whose address is Post Office Box 757, Gulfport, Mississippi, 39502-0757. Your response must be mailed or delivered within thirty (30) days from date of delivery of this summons and complaint or a judgment by default will be entered against you for the money or other things demanded in the Complaint.

You must also file the original of your response with the Clerk within a reasonable time afterward.

Issued under my hand and the seal of said Court, this 20 day of August, 2012.

County Clerk of Harrison County  
Gulfport, MS 39501

BY: Kimberly W. Bogan



IN THE COUNTY COURT OF HARRISON COUNTY, MISSISSIPPI

JOANN BOGAN,

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Plaintiff,

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vs.

CASE NO. D2401-12-1442

\*

WAL-MART STORES, INC.  
JOHN DOES 1-10 PERSONS  
JOHN DOES 11-20 ENTITIES

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Defendant.

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ANSWER

COMES NOW the Defendant, WAL-MART STORES EAST, L.P., incorrectly identified as "Wal-Mart Stores, Inc.", and files this its Answer with each numbered paragraph corresponding to each numbered paragraph in Plaintiff's Complaint as follows:

I.

As this paragraph refers to the residency of the Plaintiff, no response is necessary from Wal-Mart.

II.

Wal-Mart Stores, Inc. admits it is a foreign corporation organized under the laws of the State of Delaware with its principal place of business in the State of Arkansas, authorized to do business in Mississippi and may be served via its registered agent. However, Wal-Mart Stores, Inc. denies any involvement in the alleged incident giving rise to this action, and denies it was the owner or operator of the premises where this incident occurred. Wal-Mart Stores East, L.P. admits it is a limited partnership authorized to do business in Mississippi and may be served via

its registered agent, and that at all times pertinent hereto was the operator of the premises where this incident allegedly occurred.

III.

Wal-Mart Stores, Inc. denies it was the owner or operator of the premises where this incident occurred, but admits Wal-Mart Stores East, L.P. was the operator of the premises where this incident occurred in Gulfport, Ms.

IV.

As this paragraph is directed toward fictitious defendants, no response from Wal-Mart is required. However, to the extent this paragraph asserts allegations against Wal-Mart, the same are denied and strict proof thereof is demanded.

V.

Wal-Mart is without knowledge and information sufficient to form a belief as to the allegations relating to the details of how this incident occurred, or Plaintiff's medical condition, including her alleged injuries, and, therefore, must deny the same and demand strict proof thereof. Wal-Mart denies that its conduct constituted negligence at any time pertinent herein. Wal-Mart denies the remaining allegations contained in Paragraph V. of the Plaintiff's Complaint and demands strict proof thereof.

VI.

Wal-Mart admits that the law imposes certain duties upon it as the operator of a retail establishment, which laws speak for themselves. Wal-Mart is without knowledge and information sufficient to form a belief as to the allegations concerning Plaintiff's status as an

“invitee” while she was on its premises and, therefore, must deny the same at this time and demand strict proof thereof. Wal-Mart denies the remaining allegations contained in paragraph VI. of the Plaintiff’s Complaint and demands strict proof thereof.

VII.

Wal-Mart denies the allegations contained in Paragraph VII. of the Plaintiff’s Complaint and demands strict proof thereof.

VIII.

Wal-Mart denies the allegations contained in Paragraph VIII. of the Plaintiff’s Complaint, including all allegations in subparts a) through e), and specifically denies its conduct constituted negligence at any time pertinent herein and demands strict proof thereof. Wal-Mart denies the remaining allegations contained in Paragraph VIII. of the Plaintiff’s Complaint and demands strict proof

IX.

Wal-Mart denies it breached any duty to Plaintiff and further denies that it proximately caused or proximately contributed to cause Plaintiff’s alleged injuries and demands strict proof thereof. Wal-Mart is without knowledge and information sufficient to form a belief as to the allegations concerning Plaintiff’s medical condition, alleged injuries, or alleged damages and, therefore, must deny the same and demand strict proof thereof. Wal-Mart denies the remaining allegations contained in Paragraph IX. of the Plaintiff’s Complaint and demands strict proof thereof. and.

X.

Wal-Mart denies Plaintiff is entitled to any recovery in this matter and demands strict proof thereof.

AFFIRMATIVE DEFENSES

1. All material allegations contained in Plaintiff's Complaint not otherwise answered are hereby denied.
2. The Plaintiff was guilty of negligence that caused or contributed to cause the injuries about which she complains.
3. No act or omission of this Defendant was the proximate cause of any injury to Plaintiff.
4. Defendant owed no duty as alleged, the breach of which proximately caused Plaintiff's alleged injuries.
5. Plaintiff's injuries and damages were the result of an intervening and/or superseding cause; therefore, Plaintiff should not recover from Defendant.
6. Wal-Mart had no knowledge of the alleged defect or condition Plaintiffs allege to have been the cause of their injuries; therefore, Plaintiff should not recover from Defendant.
7. Wal-Mart respectfully demands credit for any and all monies paid to, or on behalf of, Plaintiff from any and all collateral sources.
8. Plaintiff's Complaint fails to state a claim for which relief can be granted against Wal-Mart Stores, Inc. and Plaintiff's claims are therefore due to be dismissed.

9. Wal-Mart reserves the right to add affirmative defenses as discovery in this matter has not yet begun.

DEFENDANT DEMANDS TRIAL BY STRUCK JURY

Dated November 6, 2012

/s/ W. Pemble DeLashmet  
W. PEMBLE DELASHMET MS 8840  
wpd@delmar-law.com  
CHAD C. MARCHAND 102752  
ccm@delmar-law.com  
ASHLEY POWELL GRIFFIN MS 104044  
apg@delmar-law.com  
Attorneys for Wal-Mart Stores East, LP

OF COUNSEL:

DELASHMET & MARCHAND, P.C.  
Post Office Box 2047  
Mobile, AL 36652  
Telephone: (251) 433-1577  
Facsimile: (251) 433-1578

CERTIFICATE OF SERVICE

I hereby certify that I have on this November 6, 2012, electronically filed the forgoing document with the Clerk of the Court using the ECF System which sent notification of such filing to Warren L. Conway, Esquire, attorney for Plaintiff.

/s/ W. Pemble DeLashmet  
OF COUNSEL

IN THE COUNTY COURT OF HARRISON COUNTY, MISSISSIPPI

JOANN BOGAN,

Plaintiff,

vs.

CASE NO. D2401-12-1442

WAL-MART STORES, INC.  
JOHN DOES 1-10 PERSONS  
JOHN DOES 11-20 ENTITIES

Defendant.

NOTICE OF SERVICE OF DISCOVERY

In accordance with the Mississippi Rules of Civil Procedure, Defendant Wal-Mart Stores East, L.P. gives notice to the court that the following discovery has been served on the Plaintiff:

1. Wal-Mart's First Set of Interrogatories and Request for Production to plaintiff; and
2. Wal-Mart's Request for Admission to plaintiff.

Dated November 6, 2012

/s/ W. Pemble DeLashmet

W. PEMBLE DELASHMET MS 8840  
wpd@delmar-law.com  
CHAD C. MARCHAND 102752  
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Attorneys for Wal-Mart Stores East, LP

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/s/ W. Pemble DeLashmet  
OF COUNSEL

IN THE COUNTY COURT OF HARRISON COUNTY, MISSISSIPPI

JOANN BOGAN,

\*

Plaintiff,

\*

vs.

CASE NO. D2401-12-1442

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WAL-MART STORES, INC.  
JOHN DOES 1-10 PERSONS  
JOHN DOES 11-20 ENTITIES

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Defendant.

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NOTICE OF SERVICE OF DISCOVERY

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1. Wal-Mart's First Set of Interrogatories and Request for Production to plaintiff; and
2. Wal-Mart's Request for Admission to plaintiff.

Dated November 6, 2012

/s/ W. Pemble DeLashmet

W. PEMBLE DELASHMET MS 8840

wpd@delmar-law.com

CHAD C. MARCHAND 102752

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Attorneys for Wal-Mart Stores East, LP

OF COUNSEL:

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Post Office Box 2047  
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/s/ W. Pemble DeLashmet  
OF COUNSEL

IN THE COUNTY COURT OF HARRISON COUNTY, MISSISSIPPI

JOANN BOGAN,

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Plaintiff,

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vs.

CASE NO. D2401-12-1442

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WAL-MART STORES, INC.  
JOHN DOES 1-10 PERSONS  
JOHN DOES 11-20 ENTITIES

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Defendant.

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**NOTICE OF INTENT TO SERVE SUBPOENA DUCES TECUM**

To: Conway & Martin  
Warren L. Conway  
P.O. Box 757  
Gulfport, MS 39502-0757

YOU ARE NOTIFIED that after 10 days from the date of service of this notice the undersigned will apply to the clerk of this Court for issuance of the attached subpoena directed to the following, who is not a party and whose addresses appear as follows, to produce the items listed at the time and place specified in the subpoena.

Custodian for:

Memorial Hospital at Gulfport  
4500 13<sup>th</sup> Street  
Gulfport, MS 39501

Physicians Care Plaza  
9344 3 Rivers Road  
Gulfport, MS 39503

**HIPAA DISCLOSURE:** Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), this notice shall operate as written notice to Plaintiff(s) that protected health information is being sought by the undersigned attorney pursuant to 45 C.F.R. § 164.512(e).

Dated December 3, 2012

/s/ W. Pemble DeLashmet  
W. PEMBLE DELASHMET MS 8840  
wpd@delmar-law.com  
CHAD C. MARCHAND 102752  
ccm@delmar-law.com  
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Attorneys for Wal-Mart Stores East, LP

OF COUNSEL:

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Post Office Box 2047  
Mobile, AL 36652  
Telephone: (251) 433-1577  
Facsimile: (251) 433-1578

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I hereby certify that I have on this December 3, 2012, electronically filed the forgoing document with the Clerk of the Court using the ECF System which sent notification of such filing to Warren L. Conway, Esquire, attorney for Plaintiff.

/s/ W. Pemble DeLashmet  
OF COUNSEL